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ABSTRACT

This issue of "Focus on Law Studies" contains a special emphasis on teaching about law and literature, in the form of the following six articles: "Law and Literature: New Combinations in Teaching" (John Paul Ryan); "Teaching Law and American Literature" (Janet Eldred); "Teaching Law with Sacco, Vanzetti, and the Rosenbergs" (Susan N. Herman); Ann M. Algeo's "Teaching True Crime Literature"; "The Value of Fiction in the Classroom" (Nola Allen); and "Telling Stories in School: Law and Literature as an Approach to the Business Law Curriculum" (Bruce L. Rockwood). Some articles include references. (SG)

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Teaching about Law and Literature

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FOCUS on Law Studies

Teaching about law in the liberal arts

FALL 1993
Volume IX, Number 1

PUBLISHED BY THE COMMISSION ON COLLEGE AND UNIVERSITY LEGAL STUDIES OF THE AMERICAN BAR ASSOCIATION

Law and Literature: New Combinations in Teaching

by John Paul Ryan

A course on "Great Issues in Law as Reflected in Literature" is offered to judges at the National Judicial College. Three of the current top ten best-sellers in fiction are penned by John Grisham, the lawyer-writer who tells tales of lawyers and courts. Law schools and undergraduate English programs are offering elective courses in law and literature. And books, articles, notes, and even entire journals are now devoted to reporting scholarship focusing on the various intersections of law and literature.

The Commission's 9th annual conference, *Literature, History, Culture and the Courtroom: Intersections*, held in Fort Worth, Texas on February 11–13, 1993, explored some of these relationships, particularly in the context of classroom teaching. This issue of *Focus* recaptures some of those formal and informal discussions.

Beginning on page 4, Janet Eldred argues for the need to incorporate women's voices into both the scholarship and teaching of law and literature. Observing that "law and literature scholars have discounted matters typically associated with women," Eldred identifies numerous books, short stories and poems that give voice to women's concerns. She also discusses how these fictional materials can help to reconceptualize the meaning and contours of law in an undergraduate law and literature course.

Susan Herman and Anne Algeo address, for different student audiences, the intersections of crime, trials, and literature. Herman uses famous criminal trials of the past (such as Zenger, the Scottsboro cases, Sacco and Venzetti, and the Rosenbergs) to teach law school students about issues of criminal procedure. Such cases, Herman argues, reveal that criminal justice actors, including jurors, may have "difficulty being objective because their judgment is warped by some intense social or political pressure – usually, xenophobia, fear of political agitation, or racism." Algeo uses true crime literature from modern writers, such as Joseph Wambaugh, Truman Capote, and Joe McGinnis, to explore social and justice issues with students in literature courses. True crime cases, Algeo argues, offer students an in-depth story enriched by a social context that raises questions of class, race, and gender.

Nola Allen urges greater use of fiction in political science and law courses, noting a variety of pedagogical benefits including students' interest in, and empathy with, fictional characters. Allen also identifies and discusses a range of multicultural fiction which "...explores the results of racism and exclusion upon the lives of people who look and/or speak differently from Europeans."

Finally, Bruce Rockwood describes how the techniques and materials of law and literature inquiry can be used to teach business law students. Rockwood shows how "stories" embedded in both legal cases and fictional literature can illustrate such topics as regulatory and criminal law, U.S.-Japanese trade relations, and principles of international law.

Insiders, Outsiders and the Law: 1994 Conference Theme

Insiders, Outsiders and the Law will be the theme of the ABA Commission's 10th annual conference, to be held in Atlanta, Georgia on March 18–20, 1994.

The conference will explore how law has helped (and hindered) access to American society, with respect to race, ethnicity, gender, and sexual orientation, as well as how subordinated groups have used law to achieve social and economic goals. Workshops will offer participants the opportunity to discuss multicultural challenges to the legal studies curriculum, as well as teaching strategies, bibliographic resources, and student dialogue about these issues.

Several special events are planned, including a meeting with an Atlanta judge to discuss race and the justice system. This is a *national* conference. We welcome applications from faculty of all disciplines and rank, deans, and organization-based educators around the country. Accommodations and meals, but not travel, will be provided for about 75 invited participants. The registration fee is $70 ($35 for Atlanta-area commuters).

Application deadline is January 10th. Individuals wishing to participate should submit a *c.v.* and a 1–2 page letter of application to: John Paul Ryan, ABA, 541 N. Fairbanks Ct., Chicago, IL 60611-3314.

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Commission Shortens Name, Dropping "Nonprofessional"

The word "Nonprofessional" has been deleted from the Commission's name: henceforth, we will be known more simply as the *Commission on College and University Legal Studies*. This action was approved, at the request of the Commission, by the ABA's Board of Governors at the 1993 Annual Meeting of the American Bar Association.

What's the significance of this name change? Our new name reflects *no change* in the goals, programs or activities of the Commission. We remain committed to identifying and nurturing connections between law and the liberal arts within the realm of undergraduate education. These connections, however, may be found in a wide variety of disciplines, including those beyond the normal definition of "liberal arts." Hence, among our mini-grants for 1993–94 are awards to faculty in such disciplines as management, business law, criminal justice, and health, physical education and recreation, as well as sociology, history, etc. (see page 3).

In sum, the Commission remains committed to promoting and facilitating education about the law, the legal system, and law's role in society for all undergraduate students, no matter what their career interests might be. We do *not* promote, encourage or provide information about so-called "pre-law" programs. Similarly, we do *not* work with programs that are expressly professional in orientation, such as those designed to train police officers or "paralegals" (the ABA has a distinct Standing Committee on Legal Assistants, which develops standards for the education of paralegals and approves programs).

Then, why the name change? Our new name is designed to be a shorter, simpler, more comprehensible identification of a now well-established ABA entity. Follow-up descriptions, such as the one we use for *Focus* ("teaching about law in the liberal arts"), serve to remind audiences of the Commission's purpose and major activities. Not surprisingly, "nonprofessional" was the most troublesome word in our name, both conceptually and conversationally. The word may be gone, but our mission and vision remain intact.

Symposium for Legal Studies Program Directors

Directors of undergraduate programs of legal studies and law and society *that have a liberal arts focus* will be invited to meet at a symposium in Atlanta, Georgia on March 17–18, 1994, immediately preceding the Commission's 10th annual conference, "Insiders, Outsiders & the Law." The purpose of the symposium is to assist directors to review, enhance and enrich their programs through participation in a national network.

Sessions will include (1) a scholarly overview of the field of (socio)legal studies and its relation to curricular programs, (2) assessments of program needs and strategies for revitalization, (3) in-depth examination of the legal studies curriculum including introductory courses, advanced courses, and co-curricular activities, and 4) discussion of needs for instructional materials, including texts, readers, videos, and software. Several commissioned papers and other materials will be prepared and distributed to participants in advance of the symposium, to ensure informed participation.

The Commission publishes a *Directory of Undergraduate Programs of Legal Studies, Law and Society, Etc.* (3rd edition; revised, 1993), serves as a clearinghouse of information about the programs; and provides consulting and technical assistance to programs.

Lodging and meals for the symposium and conference following will be provided to participating directors (travel expenses will not be paid). To participate, contact John Ryan at 312/988-5734 for further details regarding how to apply. *Deadline for application is November 1, 1994.*

Law and Literature Session at CCHA Meetings

Using Legal Themes and Materials to Teach Literature and Composition will be the theme for a workshop sponsored by the Commission, to be held in conjunction with the national meeting of the Community College Humanities Association in San Antonio, Texas. The workshop will take place on Thursday, October 28th from 2:15 to 4:00 p.m. English professors Lynne DeCicco of Raritan Valley Community College and Janet Eldred of the University of Kentucky will conduct the session. They will provide a variety of perspectives and materials for literature and composition courses at 2-year colleges. Special attention will be given to literature by women and people of color. To register, contact: Joeann Logan, CCHA, c/o Community College of Philadelphia, 1700 Spring Garden St., Philadelphia, PA 19130; (215) 751-8860.

Focus on Law Studies

Teaching about law in the liberal arts

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ABA Commission on College and University Legal Studies, 541 North Fairbanks Court, Chicago, IL 60611-3314.

ABA Awards 8 Mini-Grants for 1993–94

by John Paul Ryan

We received a large response to the sixth year of competition for mini-grants. Fully 78 proposals of generally high quality, proposing a wide variety of topics and learning approaches, were submitted. Eight awards were made by the ABA, and two additional awards were made by a private family in Chicago (see sidebar).

We are pleased to acknowledge the support of The Eleanor Women's Foundation, a Chicago-based organization dedicated to the advancement of women through education, leadership, and housing, which contributed $1,175 in support of a project on women and the law – awarded to Northeastern Illinois University (see below). For the 1994–95 competition, the Foundation of the State Bar of California will provide $1,200 for a mini-grant to a California college.

Awards for 1993-94 projects were made to the following colleges and universities:

Bowling Green State University
(Bowling Green, OH) – $1,200
Teaching Materials for "The Legal Aspects of Sports Management." Creation of a readings packet to enlarge students' vision of sports law, to include issues of civil rights, constitutional freedoms and criminal law raised in the performance and management of collegiate and professional sports. *Project Director:* Cathryn L. Claussen (Health, Physical Education & Recreation)

Memphis State University
(Memphis, TN) – $1,200
The Social Impact of Legal Change. Development of a new course on the effects of legal reforms on social behavior, designed to enhance students' understanding of the power and limits of law; an annotated bibliography for publication. *Project Director:* David J. Giacopassi (*Criminal Justice*)

Miami University
(Oxford, OH) – $1,200
Interdisciplinary Faculty Workshop. Development of an undergraduate program of legal studies, by enriching ongoing discussions among faculty from the social sciences and humanities with a focused workshop and outside speaker/consultant. *Project Director:* Margaret Platt Jendrek (Sociology)

Northeastern Illinois Universsity
(Chicago, IL) – $1,175
[in partnership with, and with funds provided by, The Eleanor Women's Foundation]
Battered Women and the Law: A Mock Trial. Preparation of a model trial transcript and use of active learning strategies designed to enrich a course on "Women, Crime and Criminal Justice," by educating male and female students about domestic violence and the law's response. *Project Director:* Shelley A. Bannister (Criminal Justice & Women's Studies)

Temple University
(Philadelphia, PA) – $800
Integrating Law-Related Issues into Introductory Physics Courses. Development of case studies on the legal ramifications of nuclear power, energy production and disposal, and the ozone layer, to enrich the introductory physics course at Temple and, through the American Association of Physics Teachers, courses nationwide. *Project Director:* Leroy Dubeck (Physics)

Virginia Union University
(Richmond, VA) – $1,200
"Law, the Police & Race" – A New Course and Student Forum. Development of a new course on the police and law in American history, incorporating cross-cultural perspectives and instructional software; related student forum to be sponsored in cooperation with state and local bar groups. *Project Director:* Robert Goldman (History)

Western Illinois University
(Macomb, IL) – $900
Utilizing Telecommunications for Course Enrichment. Incorporation of in-class, speakerphone interviews between students and business, academic, and legal experts nationwide, including WIU alumni, as key component of a new course on business ethics and white collar crime. *Project Director:* William J. Maakestad (Management)

University of Wisconsin at River Falls
(River Falls, WI) – $1,200
Using Moot Court in the Classroom. Production of a videotape illustrating the use of moot court in undergraduate courses: to include a narrator's introduction to the topic and case (involving fetal protection policies and a woman's right to privacy); the proceeding filmed on location; and a classroom discussion guide. *Project Director:* Susan Rogers (Business Law)

Overall, the Commission favored projects that addressed important and diverse subject area needs and offered innovative instructional approaches, as well as those projects likely to result in tangible products and impact extending beyond the grant period.

We encourage our readers to submit proposals in this coming year's competition. The deadline will be March 15, 1994. Guidelines will be mailed in November to everyone on the *Focus* mailing list.

Satinover Family Awards 2 Mini-Grants

Two additional proposals submitted to the ABA competition, in the area of women and the law, were funded by the Satinover family of Chicago, Illinois. One award for $1,200 was made to the **University of Illinois at Chicago** (Project Director: Lisa Frohmann, Criminal Justice), for incorporating into an existing course an experiential learning component, to provide students with first-hand exposure to the legal system and women's experiences. A second award of $1,200 was made to **Lake Forest College** (Project Director: Jennifer Wallace, Sociology) for the production of a resource manual and networking guide comprised of syllabi, as well as lists of potential guest speakers and faculty teaching about women, criminal justice and the law in the greater Chicago area.

Ms. Terry Satinover, an attorney in Chicago, noted that "the awards are made in honor of my late mother, Mary Klieman Satinover, who devoted much of her life to adult education especially for women, and my father, Charles Satinover, a Chicago attorney who resides in the city."

Teaching Law and American Literature

by Janet Eldred

Recently, both legal and literary scholars have witnessed a renewed interest in the overlapping concerns and methods of their two fields. The interest has been so great, in fact, that some are announcing a new field of law and literature, complete with its own distinct methodology. Those advancing law and literature as a discipline are promoting it as a progressive field, with the potential "to destabilize both the legal and literary establishments" (Weisberg, *Poethics*, 118). And indeed, many of the studies in law and literature do insist on an ethics of reading and do challenge institutional complacency and abstraction. But the claims for progressiveness dim when the matter of "inclusiveness" is considered. As this new field takes shape, it is receiving one persistent criticism: The newly configured law and literature glosses issues of gender and, to a lesser extent, issues of race and class. As other established fields are renegotiating their boundaries to encompass multiculturalism, this new field is staking and defending a terrain singularly Cultural.

Thus despite all the talk about a "new" field of study, some are finding in its research old ideas only slightly repackaged (see Heilbrun and Resnik). In overlooking feminist criticism, law and literature scholars have discounted matters typically associated with women, areas with a history of marginalization in legal and literary studies: marriage and divorce, child-custody, rape, battery, assault, and abortion. Yet all of these topics fit with ease into the province of law and literature studies.

The aims of most law and literature courses are three-fold: (1) to study themes and methods common to both law and literature, including narrative and argument; (2) to examine the use of literary metaphors or genres in the law; and (3) to look at representations of law in literature, particularly at the ways in which literature represents viewpoints alien to legal discourse. They would be further enriched if they resolved (4) to incorporate voices both gendered and multicultural; and (5) to give students significant opportunities to practice rhetorical analysis and to advance arguments in writing. The course I describe attempts to meet these objectives.

The course (junior/senior level) begins with an old favorite–*Billy Budd*. Melville's narrative of an innocent man who murders the master-at-arms on a military ship, and who, after a brief trial is sentenced to death by his captain. Outside of class, students compose for an electronic bulletin board a 400–500 word response to the simple question, "Did Captain Vere do the right thing?" The next class involves students in a written synthesis of the range of class responses, taking up such issues as Billy's rights as an individual, his new relation to the state upon conscription, and Vere's responsibility as agent of the state.

Having provided an introduction to the course, *Billy Budd* next serves another function: it introduces students to scholarship in law and literature. Students are directed to the reserve shelf at the library, where they encounter secondary sources such as Richard Weisberg's *Failure of the Word* and Brook Thomas' *Cross Examination of Law and Literature*. In a second bulletin board entry, many students, arguing against forceful and eloquent arguments by Weisberg and Thomas, support Vere's stiff sentence, citing the captain's responsibility to maintain order and the victim's policing role on the ship. Intentionally or no, they argue, Billy has killed an officer of the law and thus must draw the full force of it.

The next cluster of readings center on Thoreau's "Civil Disobedience," a text which acts as a thematic companion to Melville's short novel. Thoreau's ideas gain in persuasive force when read in conjunction with two more contemporary essays: Ronald Dworkin's "Civil Disobedience" (concerning draft evasion) and King's "Letter from Birmingham Jail" (concerning nonviolent protest against civil rights abuses). While Melville's short novel describes a benign, patriarchal authority, these essays posit the possibility of a repressive, malevolent authority. In addition, several essays by James Boyd White provide the class with a new way of thinking of the law's purpose. Instead of stressing the law's duty to formulate rules that maintain order, White emphasizes the law's ethical responsibility to listen to constituents, to hear their stories, and to negotiate between different perspectives. Just how well the law works, he proposes, can be tested by asking whether an individual's story has been accurately "translated" into legal and judicial discourse.

These essays prepare students to read contemporary literature that pits the individual's well-being against a repressive legal authority. Two such works, Leslie Marmon Silko's "Tony's Story" and Simon Ortiz's "The Killing of a State Cop," chronicle the murder of a state trooper on a Pueblo reservation by a man who is disturbed and dislocated by American military history. Both stories suggest the possibility of police brutality and raise questions about victimization and psychosis. Silko writes her story from a Laguna Pueblo perspective in which abuse and witchcraft are linked. These stories are made more compelling by their roots in fact, about which students learn when they read Lawrence Evers' article detailing the actual case. Taken together, the two stories, the article by Evers, and Melville's short novel allow students to test White's "translation" metaphor, to determine, in another posting to the bulletin board, whose voices and perspectives can be heard, particularly when the adversarial stakes are high and when representatives of social order are directly threatened.

All these texts deal with legal authorities that are "too much with us," too intrusive. The next unit looks at situations in which the law fails to protect. Adrienne Rich's brief poem "Rape" sets the frame for an analysis of women's relation to the state and its machinery. In the "sickening light of the precinct," the man with "his boots and silver badge" "types out the details" of the rape: "he has taken down

your worst moment / on a machine and filed it in a file. / He knows, or thinks he knows, how much you imagined; / he knows, or thinks he knows, what you secretly wanted." And the "hysteria in your voice pleases him best." Through this vivid imagery, the poem urges students to think about how rape is written, constructed; it reminds them to scrutinize carefully the almost perverse emphasis on victimization.

In conjunction with this poem, students move to a piece of literary criticism by Laura Tanner entitled "Reading Rape." In this article, Tanner contrasts Faulkner's focalizing construction in *Sanctuary*, which places the reader in the position of voyeur (we watch as Temple is raped), with Gloria Naylor's perspective in *The Women of Brewster Place*, which places the reader in the position of the raped woman (we are made to feel and experience Lorraine's rape). Tanner's article acts as a companion piece to Susan Estrich's "Rape": Estrich argues in part that the law views rape cases from a sexist perspective that inevitably shifts the burden of proof from the defendant to the raped woman. On the electronic network, students compose brief essays that consider the legal problem of rape and suggest ways that the law might shield women from undue scrutiny and at the same time protect men from false accusation.

Susan Estrich's "Rape" serves also as a transition into another kind of American literature—works that center on lynching. Estrich notes briefly that stereotypes of race infuse constructions of rape. This idea prepares students to read "lynching" stories such as Baldwin's, "Going to Meet the Man," Faulkner's "Dry September," and Wright's "Big Boy Leaves Home." Students also read part of the historical account *Scottsboro: A Tragedy of the American South*, to see the way in which this history revises racist assumptions of guilt by pitting race against gender. This book argues the innocence of the defendants, young African-American men, mainly by painting the white women's shady sexual pasts, by making them unworthy of protection under the law. The Scottsboro case, and its important resonances in American fiction, compel us (and challenge students) to find ways of litigating rape and writing history that do not involve a see-saw of racist and sexist perspectives.

Finally, this unit on legal and literary constructions of rape ends with a topic very controversial in feminist studies: the relationship between rape and romance. Students read Margaret Atwood's "Rape Fantasies," a story that debunks the very notion proposed in its title. Through a series of humorous vignettes, Atwood suggests that what the public thinks of as "rape fantasies" are actually attempts by women to mitigate the fear of rape, to render rape "safe" through a fiction of romance. Yet what is safe in a fictional arena is harmful in a legal one: the language of romance translates into "she wanted it" in the courtroom. Leslie Marmon Silko's "Yellow Woman," and Isabelle Allende's "The Judge's Wife" and "Revenge" blend the mythic, the fantastic, and the real to arrive at new possibilities for women's narratives that also seem to have found no place in the courtroom. Their protagonists, though raped, are not victims, but strong heroines.

Because there is so much good material about women for use in law and literature courses, I rotate the units I teach. For example, one semester took up the issue of infanticide, another battery, another women and property. These units are easily created by synthesizing materials from feminist literary criticism, jurisprudence, and history. These materials have much to offer the newly emerging field of law and literature, as well as the longstanding courses in law and literature.

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Teaching Law with Sacco, Vanzetti and the Rosenbergs

by Susan N. Herman

Several years ago, as an antidote to teaching law school classes primarily from casebooks, I put together a seminar called *Historic Criminal Trials*. The seminar began as my own excuse to read some of the history behind the names that live on in legend. The challenges that immediately confronted me were, first, what historic cases to include, and, second, how to structure the course so that it was about law as well as history. The answer to both of those questions seemed to lie in the answer to a third question: what makes a criminal trial historic?

As I read about the cases whose names survive, I gradually concluded that criminal trials are most celebrated when they are most traumatic. It is the injustices that live, but not just because they cause personal tragedy for individual criminal defendants. The truly historic cases are those in which the people we trust to make decisions about who is guilty and who is innocent have difficulty being objective because their judgment is warped by some intense social or political pressure – usually xenophobia, fear of political agitation, or racism. Teaching about these cases in law school began to seem an ideal way to allow students to examine more critically the proposition on which most legal training in criminal law and procedure rests – that fair criminal laws and procedures can ensure fair verdicts. My Historic Criminal Trials seminar became a course in Criminal Procedure, studying the extent to which the system can secure itself against injustice.

I began, chronologically, with John Peter Zenger, using the *Brief Narrative of the Case and Trial of John Peter Zenger* nominally written by Zenger himself, but attributed to Zenger's solicitor, James Alexander. (Stanley N. Katz, ed., Harvard University Press, 1972.) Zenger was a printer tried in Colonial New York for seditious libel on the basis of the irreverent, anti-government content of some of the newspapers he printed. This case introduced themes that proved common to many later historic trials: Zenger was represented by an out-of-town lawyer (Andrew Hamilton, a Philadelphia lawyer) who made a controversial legal argument. One of the judges in his case reacted angrily to being put in a political spotlight and asked to allow arguments not traditionally considered legally relevant – in fact, this judge disbarred Zenger's original attorney for having the audacity to challenge the jurisdiction of the court. Zenger's new counsel, Hamilton, also challenged judge and jury, arguing in the face of tradition that the jury should be permitted to decide the law as well as the facts. Surprisingly, the trial judge allowed Hamilton to tell the jury that they had the right to nullify the law, despite the fact that he disagreed with this proposition. The jury proceeded to acquit Zenger.

Later cases seemed to provide examples of jury nullification in the opposite direction – juries convicted defendants whom history regards as innocent. The *Scottsboro* case, for example, involved multiple trials of nine young black men who were charged with raping two white women in the Alabama of the 1930's. As the trials went on, the chief complainant's story became increasingly inconsistent and incredible, while the second complainant recanted her testimony altogether. Even in the face of physical evidence that at least some of the defendants could not have been guilty (one defendant, Willie Roberson, had syphilis and at the time of the alleged rape walked with a cane because the swelling and open sores on his genitals were so painful), not one out of over a hundred jurors ever voted to find any of the defendants not guilty. Appeals from convictions in the *Scottsboro* cases appeared many times in the Supreme Court, as the Court tried to find a procedural response to what was increasingly viewed as an unfair prosecution. The Court reversed one set of convictions on the theory that the defendants had been denied their constitutional right to counsel, and another on the theory that blacks had been unfairly excluded from the jury pool, but none of these procedural responses made any difference to the defendants. My account of the *Scottsboro* case is based primarily on Dan Carter's *Scottsboro: A Tragedy of the American South* (Louisiana State University Press, 1969). I have never seen any serious challenge to Carter's conclusion that this case represented a failure of the justice system to protect innocent defendants.

Other cases present unresolved factual disputes, sometimes looking like whodunits. The Sacco and Vanzetti trial became famous and lives on through art and literature. Ben Shahn drew the defendants; Woody Guthrie sang about them; Maxwell Anderson based two plays on their case (*Winterset* and *Gods of the Lightning*). Felix Frankfurter's famous account of the trial as a miscarriage of justice (*The Case of Sacco and Vanzetti* (Little, Brown, & Co. 1927)) has been seconded by some who still believe that the shoemaker and the dreamy fish peddler were innocent of the murders with which they were charged, but convicted unfairly by jurors who feared their ethnicity (Italian) and their politics (anarchism), *e.g.*, Brian Jackson, *The Black Flag: A Look at the Strange Case of Nicola Sacco and Bartolomeo Vanzetti* (Routledge & Kegan Paul, 1981), and amplified by others who believe that Sacco and Vanzetti were intentionally framed, see William Young & David E. Kaiser, *Postmortem: New Evidence in the Case of Sacco and Vanzetti* (U. Mass. Press, 1985). Others argue that both were guilty, *e.g.*, Robert H. Montgomery, *Sacco and Vanzetti: The Murder and the Myth* (Devin-Adair Co., 1960) while most recently, Francis Russell, author of *Tragedy in Dedham* (McGraw-Hill, 1971) has declared that we now know that Sacco was guilty but Vanzetti innocent, see *Sacco & Vanzetti: The Case Resolved* (Harper & Row, 1986).

Similarly, the gamut of historical opinion about the Rosenbergs ranges from innocent, see Walter & Miriam Schneir, *Invitation to an Inquest* (Pantheon Books, 2d ed.

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Teaching True Crime Literature

by Ann M. Algeo

Crime has been a subject of literature from the plays of the Greeks and Shakespeare to the novels of Dostoevsky and Dreiser. What has been less critically studied is the genre of True Crime or works based on actual cases written in a factual rather than a fictional mode. True crime narratives provide the opportunity to explore provocative social issues in the classroom and can be adapted for use in a variety of courses.

Why use true crime literature rather than fiction or primary legal texts? Reading about a single case in depth offers students a context for addressing social issues broader than the specific crime or criminal: issues of class, race, and gender from the perspective of the criminal, the victim, the police officer, the witness, the attorney, the judge, and society as a whole. A true crime narrative describes a crisis during which the individual and the criminal justice system are tested. "...ordinary human beings under stress...a hitherto unconnected score of persons suddenly caught in the searchlight of a police investigation" (Barzun, xi). The themes in true crime literature are the classic ones of love, hate, greed, pride, revenge, justice, and alienation, but the texts can also expose the flaws in the criminal justice system and in the society being depicted. As readers of true crime, we must face our fears of violence and ask ourselves the difficult questions posed on a daily basis by our system of justice. While the line between fiction and true crime is often a fine one, the purpose of this discussion is not to debate the placement of that line but rather to show how a text based on an actual crime, however closely or loosely, can be a valuable addition to any number of college courses. This article will explore the use of true crime in literature courses, but the themes and social issues raised would be just as appropriate in criminal justice, history, psychology, and sociology classes.

Using true crime narratives presents some pedagogical challenges. Discussing an actual crime rather than a fictional one can feel like, as one student put it, "profiting from the misery of others." It is relatively easy to become involved in Raskolnikov's fictional plight in *Crime and Punishment* and to empathize with if not condone his actions; it is more difficult to empathize with or admire the cleverness of a serial killer like Ted Bundy without appearing ghoulish. Since students in classes invariably say it makes a difference to them when the story is "real," it is probably a good idea to address this issue of fictional versus actual crimes at the beginning of the course and to emphasize the purpose for which the narratives are being used in that course. In a literature course the purpose could be to study the texts for the traditional elements of plot, setting, characterization, point of view, and theme. In a criminal justice course, the texts could be used to illustrate problems confronted in criminal investigations. Whatever the purpose, make that purpose clear to the students. You might also want to discuss the "Son of Sam" laws that limit a criminal's right to profit monetarily from a crime by selling his or her story. An ethical question may arise when the narrative being used is based on a local crime. In one criminal law course a student revealed that he was related to one of the principals in a local case being discussed, making for a very awkward moment in the classroom. Advise students at the beginning of the course that they have the right and the responsibility to stop class discussion if they are personally involved in a case.

Practical considerations when using true crime involve the selection of materials and the provision of background information. When choosing texts, consider character development, the social context, the legal issues involved in the case, and the clarity with which the legal proceedings are presented. The quality of the writing in true crime varies greatly, and most of the narratives involve some degree of violence. You would naturally want to choose a text with which you feel comfortable and that would be appropriate for the students. Some contemporary writers who specialize in true crime and write well include Jonathan Goodman, Darcy O'Brien, Joe McGinniss, Jack Olsen, and Ann Rule. For an elective literature course, works such as Truman Capote's *In Cold Blood*, Ann Rule's *The Stranger Beside Me*, Thomas Thompson's *Blood and Money*, and Joseph Wambaugh's *Echoes in the Darkness* are appropriate at the undergraduate level and can be supplemented with shorter narratives, poems, and films. On the other hand, Norman Mailer's *The Executioner's Song*, even if it were not 1,000 pages long, would probably be inappropriate based on the sexually explicit language and content. Of course, texts may also be selected to highlight a particular type of crime, social issue, or aspect of the criminal justice system. For example, Wambaugh's *The Blooding* describes the first use in England of DNA "genetic fingerprinting" to solve a crime. Finding specific kinds of narratives, however, is not always easy if you are unfamiliar with the genre. The only bibliography currently available, in Gaute and Odell's *The New Murderers' Who's Who*, is extensive at 1,032 international entries but is unannotated and refers primarily to British editions of texts. As a reference source, however, Gaute and Odell is invaluable for its brief descriptions of international homicides alphabetically arranged, indexed as to the manner of death, and cross referenced to the bibliography. Other sources of titles are book reviews and articles in magazines such as *Crime Beat*.

One of the major obstacles when selecting true crime material is the length of the well-written texts, which average 400 pages. While this length would not daunt a Dickens scholar, it provides a challenge when variety is a goal or when true crime is being used to supplement other reading material. One solution, when permission can be obtained, is to use shorter works from local periodicals or national magazines such as *The New Yorker* and *Vanity Fair*. *The Book of Murder*, edited by Sebastian Wolfe, contains a collection of essays on contemporary crimes by writers such as Joan Didion, Truman Capote, Kurt Vonnegut, and Martin Amis. Jonathan Goodman's collection of poems about crimes, *Bloody Versicles*, could also supplement longer texts. Another possibility is to use true crime documentaries that present fascinating views of the investigation and trial processes, such as Errol Morris's *The Thin Blue Line* and Joe Berlinger and Bruce

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The Value of Fiction in the Classroom

by Nola Allen

Fiction is a valuable tool in the classroom. It is interesting to the students, acts as a mediating instrument to set up situations for discussion in a fashion that discursive exposition and essays do not, teaches values, and, with careful selection, is relevant to the times, circumstances and frame of reference of the issues to be considered.

I first became aware of the possibilities of the use of literary texts as a teaching tool when teaching a course designed to instill community responsibility in future corporate managers. One of the assigned texts was a book that detailed the background and travails of a case pursued by a group of employees and their families, who were injured when the retaining wall of a holding pond failed during heavy rain due to a design flaw. Their employer knew about the flaw, but failed to correct it because of the expense involved. In a fashion that a series of dull lectures could not, the book taught about civil procedure, class action lawsuits, corporate veils and insulation of assets, master-servant relationships, use and value of expert witnesses, assessment of damages, and corporate responsibility to the community. Not once did any student complain about reading the 400 page paperback; to the contrary, they all lauded its being assigned. Not long after that, *Gideon's Trumpet* was published and greatly assisted the teaching of criminal justice and constitutional law courses. Today, we have for constitutional law and journalism courses books such as Anthony Lewis' *Make No Law*.

Students frequently complain that reading assignments are difficult to read, poorly written, uninteresting, and not relevant to any experiences that they have had, or are likely to have. They state that reading an assignment before class is a waste of time because they do not understand it. They fail to realize that having no understanding of the subject matter prior to class means they cannot follow the lecture, ask meaningful questions, or make significant contributions to the class discussion. On the other hand, if they have mastered the topic, there is little gained from the class presentation. Whenever fiction is introduced, student preparation increases and discussion is lively. Proof of advance preparation is demonstrated by recitations of the experiences of the characters, questions about scenarios or the background and circumstances of the scenes, and comments about the consistency, or inconsistency, with the textual material. Fiction appears to bring material to life.

Published works of fiction, typically, are interesting. Writers use literary license to "jazz up" the mundane. They do not feel compelled to portray life in its most pedestrian manner. Any person who has ever worked in a large law firm knows that the environment is not as exciting as it is portrayed in *The Firm*. However, the story line can be used to illustrate issues of concern to sociologists, criminologists, psychologists and political scientists. *Tar Baby*, *A Time to Kill*, and *Indian Lawyer* all vividly paint pictures of the lifestyles of some members of ethnic and racial groups and the mores of different regions of our country in an interest-seizing manner. Lessons about people and events are learned painlessly, when they are a part of a fast moving plot.

Difficult life decisions can be explored from many aspects when the initiating instrument is a work of fiction. There are few issues as divisive as abortion, capital punishment, euthanasia, war, suicide, and religion. However, when characters in a book are faced with resolution of one or more of these concerns, a full discussion can occur without rancor and finger pointing. We then can discuss the resolution in terms of the circumstances as the author presented them. Students are able to express their views as if they were hypothetical, thereby avoiding the personal criticism that often occurs in real-life situations. We all understand that the character's decisions are important to the fulfillment of the plot, while admitting that, under different circumstances, the outcome could have been different.

The acclaimed literary critic Ed Bennett states, "The teaching of literature is the teaching of values." Fiction makes its most important contribution to the learning process when it teaches values. British and, more recently, many ethnic writers use a letter or introductory format to present the thought processes and values of the characters. Toni Morrison's portrayal of the thinking of her characters in *Disappearing Acts* permits the reader to understand why certain events occurred. We are able to discuss why the main female character previously had several abortions. We hear her thinking as she decides not to terminate her last pregnancy. We hear the main male character express his anger, fear and disgust with his inability to get and keep a good paying job, thereby failing to conform to the "work ethic." We understand why he finds it difficult to complete his education, so that he can qualify for the position that he feels he so richly deserves. We also learn why some relations between men and women are difficult to cement through the legal institution of marriage.

In the classroom (as well as in my regular law and literature reading group of lawyers, judges, and other faculty), I have been struck by the diverse perceptions and conclusions of the participants. Obviously, this diversity is a result of the difference in experiences of the parties. To hear unique

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Telling Stories in School: Law and Literature as an Approach to the Business Law Curriculum

by Bruce L. Rockwood

Teaching undergraduate business law has changed significantly in recent years. In response to contemporary standards of the American Assembly of Collegiate Schools of Business, there is less emphasis on private law subjects, and more on teaching about the legal and regulatory environment, ethics, environmental issues, and the diverse workplace of the 21st century. It has also become essential to develop skills in reading, writing, critical thinking and problem solving. At the same time, the emerging "Law and Literature" movement, with its advocacy of a careful reading of texts, its treatment of law as a form of literature, and its observation that many legal and ethical concerns can be fruitfully explored through literature (Rockwood, 1993), provides an important vehicle for helping business law teachers meet these new objectives. Connecting law and literature also enriches the classroom experience and builds bridges between law and humanities faculty.

Stories in Legal Cases

To illustrate, let me explain how I use "Law and Literature" approaches in my business law courses. One technique I use is to demystify the legal cases we read by characterizing them as stories, and by explaining how advocates compete before a judge and jury using the power of rhetoric to try to persuade them to accept a particular version of reality and draw legal conclusions from it. James Boyd White (1985: 168-69) notes, "One way in which the law is poetic is that it works by narrative.... The story is the most basic way we have of organizing our experience and claiming meaning for it." In almost any handbook of appellate advocacy the importance of the statement of the facts is emphasized: stating them fairly, but in a manner most calculated to persuade the court to find in your favor is essential.

This point can be highlighted by having the students brief major cases in a text, and then comparing how they summarized the statement of facts in the brief with each other and the professor. What facts do they highlight, and what facts do they omit? What personal experiences do they bring to their reading of the case, and how do they reconcile the reasoning of the court with the facts as they are presented? In *Poethics*, Richard Weisberg (1992) compares the statement of facts in two famous opinions by Justice Benjamin Cardozo, *Hynes v. New York Central Railroad*, and *Palsgraf v. Long Island Railroad*, to show "what all appellate judges do: frame the facts and legal arguments in the manner most supportive of the court's view." (p. 19) I cover *Palsgraf* in my unit on tort law, and students read Judge Andrews' dissent as a point of comparison. Competing views of

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legal doctrine can be handled the same way. When I teach about the First Amendment, or the rights of the corporation, I always use the Rehnquist dissent in *First National Bank of Boston v. Belloti* (435 U.S. 765, 1978), and discuss with students the rights of listeners as opposed to speakers, and the artificial nature of the corporate person which, nonetheless, is somehow conceived by the majority of the Court as equivalent to a flesh and blood person when it comes to speech.

Russell v. U.S. (471 U.S. 858, 1985), a commerce clause case I cover (Rockwood, 1992), refers to legislative history as a tool of interpretation. I explain how a piece of legislation becomes translated into the United States Code through the legislative process, and I tell stories about the accidents that can occur in the way bills become law. I use Eric Redman's classic first person narrative of the origins of the National Health Service Corps, *The Dance of Legislation*, as an example of how the legislative process works or can work (more recent narratives of Congress, including the careers of legislators described in Redman, can be used to produce a counterpoint). We discuss the pros and cons of using floor debates and committee reports to explain what a law means and to tie in the contemporary criticisms of the use of legislative history by Justice Scalia. The problem of "intentionalism" as an interpretive perspective is widely discussed in law and literature writings (see, for example, Levinson & Mailloux, 1988).

Stories in Literature

Many stories, novels and plays address contemporary legal issues relevant to business law. To teach about the food and drugs laws in a unit on criminal or administrative law, for example, one could use Upton Sinclair's *The Jungle*, and discuss how a political novel led to a legal revolution. In my course "The International Legal Environment of Business," I have found there are many novels which address complex legal and policy questions in timely ways. I have used various novels by Paul Erdman in the past (e.g., *The Billion Dollar Sure Thing* and *The Silver Bears*). When I teach about U.S.-Japan relations, I have used James Fallows' *More Like Us* and Clyde V. Prestowitz, Jr.'s *Trading Places*, but when I discovered Michael Crichton's exciting novel Rising Sun, with these and many other books in its bibliography, I realized that it might prove a better entrée into the relevant issues, when supplemented by excerpts from the U.S.-Japan Structural Impediments Talks.

Perhaps the most important example of how law and literature interconnect is the case of Salman Rushdie, who remains under a death sentence pronounced by Iran for the crime of publishing *The Satanic Verses*, which offended some believers in Islam. Freedom of speech is fundamental to the law of the United States, and the First Amendment is the main thing that makes the United States different from other nations. The law of the United States clearly guaranteed Rushdie the right to write, to publish, and to seek to influ-

ence public opinion through the free play of ideas. In condemning Rushdie, Iran claimed the right to punish such a "speech-act" under its criminal code, even though the book was not published there and enforcement of Iran's laws and related cultural values would violate the territorial jurisdiction of the United States, United Kingdom, or wherever Rushdie or his interpreters and publishers were found.

"Free speech is the whole thing, the whole ball game. Free speech is life itself," Rushdie said in a talk at Columbia, and he is right. His new novel, *Haroun and the Sea of Stories*, is now available in paperback, and I have used it coupled with a videotape on his case from CBS's "Sixty Minutes" in my international law class. I have also designed a hypothetical problem similar to those used in the Jessup International Law Moot Court Competition. In this sceniario a speech by Rushdie is bombed by an Iranian national at an American university, and the U.S. sues Iran before the International Court of Justice. The students prepare written memorials on behalf of the United States or Iran, and then write opinions for the ICJ taking a view opposite to the view they took in their memorials. Students found this very stimulating, particularly our international MBA students.

Conclusion

In sum, stories are interesting, attention getting, and full of analogies, implications and insights that mere rules, check lists, and flow charts fail to convey. Some of the stories of law are already found in our textbooks, in judicial opinions, and in the Wall Street Journal, Business Week, and other news sources. But we business law professors should broaden our use of stories, to include nonfiction narratives, novels, plays, short stories, movies and the like. This will enhance our classes and, perhaps, build a constituency for a separate course in Law and Literature. Furthermore, making such connections among law, literature and business will help develop a coherent undergraduate legal studies curriculum, one that binds together business and liberal arts colleges within the university in the pursuit of general education.

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Narratives for Commercial Law

Professors who teach Agency, Corporations and the UCC will find the following texts exciting and useful as supplements in class:

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Teaching Law with Sacco

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1983) to a split verdict (Julius was guilty; Ethel was not), see Ronald Radosh & Joyce Milton, *The Rosenberg File: A Search for the Truth* (Holt, Rinehart & Winston, 1983). The conduct of Judge Webster Thayer in the Sacco and Vanzetti case and Judge Irving Kaufman in the Rosenberg trial, like the conduct of the prosecutors and defense counsel in both cases, provides fertile ground for discussion.

Provocative issues about the conduct of judge and counsel arise even more often in trials where ideology is a central issue. My seminar has also included more overtly political trials, like the trial of the Chicago 8 (an edited transcript of that trial is available under the title *Tales of Hoffman* (Bantam Books, 1970)), and Dr. Benjamin Spock (see Jessica Mitford, *The Trial of Doctor Spock* (Knopf 1969)). Despite the fact that many of my students now need to be convinced that Jerry Rubin was not always a necktie designer and that Dr. Spock did not have particularly long ears, the issues these trials raise about how to treat dissent or civil disobedience in a free society, and about the role of judges and juries in cases where political defenses are raised, are timeless.

The historical perspective of these cases has proved an invaluable tool because these stories are compellingly real, and also sufficently distant in time and place that students feel able to achieve some objectivity in their judgments. At the same time, these trials are not so distant as to be incomprehensible. I have made few attempts to use trials which, although famous, would present unfamiliar legal contexts, like the Dreyfus affair, perhaps, or the trial of Joan of Arc, which might be too difficult to understand or too easy to dismiss. (I did once make an exception for the trial of Socrates.)

Many of my students go on to practice criminal law, often in prosecutors' offices, and carry with them, I think, the very salutary caution that even a system that looks fair can fail. The view from history is valuable as an antidote or complement to the usual messages conveyed by training about the law. The failures of the system, as Michel Foucault might say, are part of the system.

Susan N. Herman is Professor of Law at Brooklyn Law School, Brooklyn, NY 11201.

True Crime Literature
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Sinofsky's *Brother's Keeper*. Telemovies and segments from news-magazine shows are often available on video.

Once a text is selected, the need for background information should be considered. Since any course using true crime texts is of necessity interdisciplinary, introductory lectures or readings from secondary sources on the criminal justice system, criminal law, and the trial process may be needed, as well as lectures on specific points in individual narratives, such as the insanity defense or the role of expert witnesses.

Class discussion is usually easy to generate. Response journals can be used to monitor reading assignments and to determine topics for discussion. Collaborative projects work well in class, as do individual assignments in which the student is asked to trace a theme or critique the actions of a character and then share his or her observations with the class. Unsolved crimes provide a wealth of topics for research papers.

True crime literature is intellectually challenging material that can be used in a variety of social science and humanities courses. The texts demand critical thinking skills and elicit lively debate in the classroom. The next time you are preparing a course, consider including a true crime narrative on the syllabus.

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Syllabi on Law, Trials and Literature

The ABA Commission on College and University Legal Studies has a Syllabus Clearinghouse, comprised of more than 200 undergraduate course syllabi having a law-related focus. Among the 17 categories available for purchase is "Law, Trials and Literature," which currently has 15 syllabi. To order, please send a check for $5, payable to the American Bar Association, to Anthony Star, ABA, 541 N. Fairbanks Ct., Chicago, IL 60611-3314. Allow 2–3 weeks for delivery.

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News and Resources

Call for Papers: Law & Mental Health Policy. The Journal of Mental Health Administration (JMHA) is soliciting manuscripts for a special section on Law and Mental Health Policy to be published in 1994. Contributions are invited on such topics as epidemiology, financing, the impact of law on the delivery of patient services, the impact of legislation on mental health policy, alcohol and drug abuse, etc. Manuscripts should be 15–25 pages in length, contain an abstract, and be submitted no later than December 31, 1993. Send manuscripts to Dr. Bruce Lubotsky Levin, Editor, JMHA, Florida Mental Health Institute, University of South Florida, 13301 Bruce Downs Blvd., Tampa, FL 33612-3899; (813) 974-6400.

Call for Papers: Feminist Jurisprudence. The newsletters "Philosophy and Law" and "Feminism and Philosophy" are co-sponsoring a special joint issue on feminist jurisprudence to be published in the Spring of 1995. The editors welcome contributions of up to ten pages that clarify issues, make new connections, review literature, or provide curricular suggestions on the subject of feminist jurisprudence. Essays should be submitted by June 1, 1994, in triplicate (with the author's name on the title page only), to: Hilde Hein, Department of Philosophy, College of the Holy Cross, Worchester, MA 01610-2395; or Rex Martin, Department of Philosophy, University of Kansas, Lawrence, KS 66045-2145.

Electronic Discussion Group for Legal History. Scholars interested in legal and constitutional issues in history may subscribe, at no charge, to H-Law, an electronic discussion group under the auspices of the University of Illinois-Chicago's H-Net program, directed by Richard Jensen. Subscribers to H-Law can participate in scholarly discussions, share syllabi and teaching strategies, and exchange news about conferences, fellowships, job opportunities, and book reviews. Contact Listserv@uicvm.bitnet or CFCRW@UXA.ECN.BGU.EDU.

Electronic Discussion Groups for Legal Studies. Scholars and teachers who have access to Internet, Bitnet or one of the commercial services with e-mail capabilities and would be interested in sharing information electronically about legal studies or participating in a Listserv-type discussion list, contact: Professor Ethan Katsh, Department of Legal Studies, University of Massachusetts, Amherst, MA 01003; E-mail address: Katsh@Legal.Umass.edu.

Mock Trial Handbook Available. *Preparing and Conducting a Mock Trial* by John Shipley, Esq. is now available. This 120 pp. handbook covers such topics as how to develop a case for mock trials, preparations for lawyers and witnesses, and trial techniques. For cost information or to order, contact: John Shipley, 58 Harrowgate Drive, Cherry Hills, NJ 08003; 609/424-4208.

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[*Editor's Note: The following are excerpts from reports on projects funded by ABA Mini-Grants to colleges in 1992–93.*]

Teaching the Constitution with Crime

Starting in the Fall of 1992, first year students entering Eastern Illinois University would be required to take a course on the Constitution. I knew we would be using Melvin Urofsky's *March of Freedom* and its accompanying documents reader as our textbooks, and that I would be taking students through the great documents in constitutional history.

I had been researching the Civil War era court records of Vicksburg, Mississippi and the surrounding county, Warren. These records provided an opportunity to make constitutional controversies more real to my students, if I supplemented the great documents with actual local criminal cases. I could see in the records that, before passage of the Fourteenth Amendment, Vicksburg courts did not treat blacks as citizens. But did the Fourteenth Amendment change this?

The Vicksburg case files usually contained just a grand jury indictment, a capias [arrest warrant], and subpoenas. But some files had testimony, judges' instructions to the jury, maps of the crime scene, jury lists, letters, motions, affidavits, and prosecutors' notes. Given the great bulk of the files and the limited time I had physical custody of them, I created a computer database of crime in Warren County from 1850 to 1879. The information contained in the indictments proved readily quantifiable. Several classes, including one on archiving, helped organize and inventory the chaotic records and abstract data from the indictments into the database.

I wrote a series of computer programs, so that students could analyze the data to determine if "politics" affected crime in Warren County in the 1870s. My goal was to develop an awareness among students that ideology shaped access to criminal justice. I also asked students to examine the effects of the 14th Amendment in Warren County. Were ordinary citizens in court affected by its ratification? Students discovered that the race and politics of justices of the peace, prosecutors and other court officials had a great deal to do with who went to court.

The Vicksburg court records were a valuable tool that introduced students to the impact of historical developments at the local level. Students came to appreciate how local conditions could blunt the impact of constitutional amendments. And they came to understand the roles played by Republicans and white conservative "Redeemers" in new ways, as well as the horrible impact of vigilantism. More generally, the project encouraged the development of critical reasoning skills, by requiring students to formulate and test hypotheses with available data.

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A Matter of Life and Death: Who Decides? Symposia on Legal and Ethical Issues for the 1990s

The ever-escalating triumphs of modern technologies and their impact on human life, as well as death, carry with them serious ethical and legal dilemmas. Surrogate parenting, physician assisted death, the Patient's Self Determination Act and the Human Genome Project all carry with them complicated legal and philosophical dilemmas involving questions of privacy, paternalism and autonomy.

Through a mini-grant from the American Bar Association to El Camino College, I was able to organize two campus symposia directed to the exploration of biomedical issues that intersect a myriad of ethical and legal problems. The goal of these symposia was to expose the students at my college, as well as the surrounding community, to an exploration of the issues involved in Physician Assisted Death and in the Patient's Self Determination Act (PSDA). Because these biomedical problems cut across social, political, economic and gender lines, they seemed especially fruitful to promoting ongoing dialogues *after* the symposia were concluded. The topics provided our ethnically and racially diverse students with an appreciation of the law's struggle with issues that humanized what, for most students, is a mechanical, somewhat coercive and narrow concept of law. The exposure to these issues provided an avenue by which to study the legal process at work. As a result of the symposia, our students benefited by gaining an understanding of the legal system's struggle with these topics, the ethical issues at stake, and the impact on their lives.

Planning meetings were arranged with the nursing, law, history, sociology, psychology, English and philosophy departments, in order to determine what form the symposia ought to take and what information would be most useful to students in these disciplines. Prior to the symposia, the topics were incorporated into courses in these disciplines through lectures and writing assignments. I created a section in the library for literature which focused on the topics to be explored in the symposia. During the grant period audio and video materials, textbooks, reprints and journals were added to the library's holdings. And students from varying disciplines worked together in the organization and implementation of the symposia.

The Fall symposium consisted of four speakers addressing the question of physician assisted death from differing perspectives, including those of the medical profession, civil libertarians, health care ethicists, and the politics of the related California ballot initiative on this subject. The Spring symposium was organized around the legal and ethical ramifications of the Patient's Self Determination Act. Speakers addressed the legislative history and ethical justifications of the PSDA, its implementation in California, and the impact of the act on nursing practice. The audiences for both symposia were quite diverse, including both students and people from the community.

As a direct result of these symposia, lines of communication have been opened between academic departments and with the community at large. We are now discussing the possibility of interdisciplinary courses that would further our goal of providing a less insular educational environment. Finally, we now have in place a valuable addition to our library in the area of bioethics and the law, which benefits the entire campus.

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The American Bar Foundation

by Anne Tatalovich

In 1950, amid growing public concern about the emergence of national crime syndicates, the American Bar Association established a Commission on Organized Crime. Among its recommendations, the ABA Commission urged the creation of a permanent research institute. In two years, the research center, the American Bar Foundation, was incorporated as a separate organization and given a broad research mandate – "to study, improve, and facilitate the administration of justice." For over 40 years, the ABF has been dedicated to the study of law, legal institutions, and legal processes in society.

The Foundation's first major research project – the Survey of the Administration of Criminal Justice – brought ABF researchers into the field where they documented the actual operation of the criminal justice system, one that differed sharply from the textbook vision of how justice was administered. From an organizational standpoint, the criminal justice survey exhibited a research style that characterizes the ABF to this day – sophisticated empirical research employing a wide range of social science methods conducted by scholars drawn from a variety of disciplines. Since its inception, the ABF has explored a broad array of issues in studies that have sought to explain legal phenomena, influence policy debates, or build new theoretical perspectives.

The Research Agenda

The current research agenda reflects both continuity with the past and attention to research and policy concerns of the present. Areas of research focus include:

- Professionalism and the transformation of the legal profession in the United States and abroad
- Patterns and causes of civil litigation
- Alternative means of resolving disputes, including negotiation, mediation, and arbitration of domestic and transnational disputes
- Law and economics of discrimination
- Jury decisionmaking and the impact of withholding "relevant" information
- Medical malpractice claims in and arising from the hospital setting
- Lawyers' and litigants' attitudes about the civil justice system and alternative dispute resolution
- Taxpayer compliance
- Discretionary decisionmaking in the processing of administrative disputes
- Law and ethics of new reproductive technologies
- Historical analyses of industrial safety and maritime law

A brief overview of selected projects in three areas can serve to convey a flavor of the ABF's approach to studying sociolegal phenomena.

Civil Justice and Dispute Processing. One series of ABF projects is developing models and approaches that will help explain why, for example, there is so much or so little litigation in particular areas, why the jury works better with some instructions than others, or why, as several studies in the area of procedural justice have discovered, litigants' evaluations of particular dispute resolution alternatives are so influenced by the opportunity to tell their stories. Also within this framework, the ABF is building a body of empirical research that will address such key questions as the role of the jury, the incidence of products liability litigation, the number of punitive damage awards, and the relationships between litigation and medical malpractice.

The Legal Profession and Legal Education. Throughout the ABF's history, research on the legal profession has been a hallmark of its research agenda. This line of research now includes a study of the law school experience, based on actual exchanges in classrooms, that seeks to determine how students are socialized into the profession and taught to "think like lawyers." Another project studies how legal training affects lawyers in business as contrasted with non-lawyer executives. The management of conflicts of interest in the practice of law is the subject of one study, while another addresses international commercial arbitration.

Discrimination. There is a distinctive ABF approach to research on discrimination, one that questions the approaches of both those who would rely solely on market solutions and those who promote only government remedies. One project focuses on the role of antidiscrimination law in improving the economic status of African-Americans, showing through innovative statistical analyses how one can assess the gains attributable to Title VII of the Civil Rights Act of 1964. Another project studies employment discrimination litigation and has found that such case filings are strongly influenced by the business cycle. Other projects are examining discrimination in new car purchases and the economies and markets that lay beneath the famous "equal pay" cases.

Publication of Research Results

The results of ABF research are presented in a variety of forums. Articles by Research Fellows are published regularly in a broad array of academic journals, such as *Law & Society Review, Harvard Law Review, American Journal of Sociology, and the Journal of Economic Literature.* Within the past year several books, authored by ABF Research Fellows, were published, including: Robert L. Nelson, David M. Trubek, and Rayman L. Solomon (eds.), *Lawyers' Ideals/Lawyers' Practices: Professionalism and Transformations in the American Legal Profession* (Cornell, 1992); Christopher L. Tomlins and Andrew J. King (eds.), *Labor Law in America: Historical and Critical Essays* (Johns Hopkins, 1992); John P. Heinz, Edward O. Laumann, Robert L. Nelson, and Robert H. Salisbury, *The Hollow Core: Pri-*

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Unequal Justice: A Question of Color
by Coramae Richey Mann
Bloomington: Indiana University Press. 1993. 301 pp., $35.00 (cloth); $14.95 (paper).

Reviewed by Karen A. Joe

It is no surprise that America's criminal justice system is in a state of crisis. It has been for some time now, and there are few social institutions in this society which are so clearly failing and disheartening. The Bureau of Justice Statistics' most recent survey of State Prison Inmates indicates that the prison population increased by 58 percent from 1986 to 1991. During this five year period, the overrepresentation of minorities in state prisons also grew; by 1991, 65 percent of the 711,643 state prisoners were people of color. Today, *minorities are the majority in prison.* On a broader level, the number of minorities under any form of correctional supervision is startling. Nearly one in four Black males and one in ten Hispanic males between the ages of 20 and 29 are either in jail, in prison, on probation or on parole. By contrast, only one in 16 White males in this same age group are under correctional control. How are we to understand the disproportionate involvement of minorities in the criminal justice system?

This question is the central focus of *Unequal Justice*. The book is impressive in scope and represents Mann's five year endeavor to sort out the myriad of research and policy issues associated with the relationship between race, crime and the justice system. Although other scholars have described and analyzed the criminal justice experiences of minority groups, their efforts have concentrated largely on one ethnic minority group at a time. Mann's purpose in this landmark treatise is to provide students and scholars with a more comprehensive and comparative approach to understanding the life experiences of all major racial minority groups, as well as the relationship between their experiences and their disproportionate and unequal treatment in criminal justice processing.

Mann's approach throughout the book is eclectic, critical, and builds on the humanist tradition. She divides the issues of the relationship between race and unequal justice into two main sections; each contains three chapters. In each chapter, she systematically sorts through and presents data from generations of criminological research studies, policy reports, and official statistics on African Americans, Asian Americans, Hispanic Americans, and Native Americans. At certain points in the book, she highlights findings from her previously published manuscripts on African Americans and the justice system. Although she has written on women, crime and the law, this book is largely devoted to the disparate treatment of adult male minorities in the criminal justice system. At the end of each chapter, she reflects on the analysis from a minority view.

The first section, "Minorities and Crime," describes how and why unequal justice is applied to minorities. She outlines the complexities of defining race through the minority experience and then directly confronts the "minority crime problem." Is crime more prevalent among minorities? Or are official reports on minority crime an expression of racial discrimination by the criminal justice system and society? She addresses these questions by reviewing the reliability problems of official statistics, questioning the standard method of across-race comparisons used in analyzing arrest statistics, and revealing quite different findings on race and arrests through within-race comparisons for specific offenses. The concluding chapter of this section is equally as thoughtprovoking, as Mann provides a thorough review and critique of the common theoretical explanations of crime among each minority group.

The second section, "The Response to Minority Crime," explores the discriminatory treatment of minorities under the law by first tracing the creation and enforcement of laws targeting specific minority groups from the colonial period until the mid-1970s. The heart of the book lies in the next chapter, entitled, "Unequal Justice: A Question of Color." It is lengthy, but extremely impressive, as Mann traverses through the criminal justice process, examining research and policy studies on the discriminatory treatment of minorities at each stage. Critical questions are raised to challenge the reader to explore more fully. *Bordenkircher v. Hayes* (1978) is a case in point. Kentucky prosecutors offered a five year prison term for a return of Hayes' guilty plea on an $88.30 check forgery. Hayes had two prior convictions so that if he refused the offer, the prosecutor would have also charged him as a habitual offender. Hayes did not accept the deal, was convicted and sentenced to life. The sentence was overturned on appeal, but reversed by the U.S. Supreme Court. Mann leaves us with the question: Is a plea really a bargain, particularly for minorities? The book closes with a research review of the problems and consequences of minority correctional warehousing.

While the book is intended to be comprehensive and covers a multitude of research studies and policy reports, it can be overwhelming on the first reading. Mann's presentation of some of the debates within criminology may require a second reading. This has less to do with Mann's writing than the methodological complexities of some of the issues, such as the longstanding discussion on racial discrimination and non-capital sentencing patterns.

Mann's comparative approach is extremely effective in drawing out the similarities and differences in the arrests of different minority groups and discriminatory policy responses. However, discussions elsewhere in the book on Asian Americans, Native Americans, and to a lesser extent, Hispanic Americans, are limited or dated. Her analysis of the African American experience is the most comprehensive of all ethnic groups since, as she correctly points out, more research has been done on this group than with any other in the social sciences.

Unequal Justice: A Question of Color would work well as one of several texts in advanced courses in criminology, legal studies, and law and social policy. Students should have some familiarity with criminological research and the criminal justice system, as each chapter provides very brief explanations of the technical aspects of law and the justice process. The book is essential reading and a valuable resource for scholars and policymakers who must come to grips with questions of race and justice.

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Briefer Book Notes

Inside the State: The Bracero Program, Immigration and the I.N.S.
by Kitty Calavita
New York: Routledge, 1992.
243 pp., $49.95 (cloth); $15.95 (paper).

Kitty Calavita's *Inside the State* expands the field of immigration history by exploring the development and policy making of one of the United States' largest programs to import temporary farm labor. *Inside the State* demonstrates how over a 22 year period the Immigration and Naturalization Service took control of the Bracero Program and greatly reinterpreted the program's mandate.

Initially conceived by Congress in 1942 as a response to war-time labor shortages, the Bracero Program went well beyond replacing workers lost to the war effort (a somewhat dubious need both during World War II, and later during the Korean War). It became, during the 1950s, a way to combat (and replace) illegal immigration and labor. *Inside the State* examines the evolution of the program, and how and why this change occurred. The complex interactions of the needs of agricultural producers, government agencies, and the legislative branch created a myriad of possible ways to understand the program's institutional behavior. Calavita successfully penetrates the unfriendly exterior of the INS, and she uses an impressive combination of oral histories, congressional records and previously undocumented (and unarchived) internal INS documents to suggest her own interpretation.

She rejects structuralist and instrumental interpretations of the Bracero Program in favor of an interpretation that is based upon the importance of human agency. Instead of suggesting that the INS acted in the ways that it did either because of inherent aspects of the structure of government, or because the INS worked to facilitate the interests of its constituents in the agriculture business, Calavita looks to the actions of individuals. The comments, and day-to-day behavior of INS officials, most notably the flamboyant Commissioner Joseph Swing, refute the more theoretical interpretations, and support Calavita's argument for human agency.

Inside the State will not serve as a complete introduction to the history of the Bracero Program; it contains little about the workers themselves, the conditions under which they worked, or the economics of agriculture labor. But as an examination of the workings of a bureaucratic agency, the book will provide a compelling argument for the need to appreciate human agency as an important factor in the understanding of the INS's, and perhaps any agency's, function and work.

Students will find the book easy to read, and accessible at both the factual and the theoretical level. With a paperback edition available, *Inside the State* could enrich courses in administrative law, sociology, public policy, and law and society.

Family Matters: Readings on Family Lives and the Law
Edited by Martha Minow
New York: The New Press, 1993.
416 pp., $40.00 (cloth); $24.95 (paper).

This impressive anthology contains 60 articles, short stories, poems, and other texts on a wide range of historical, cultural and legal issues and dilemmas concerning the family. The authors include such well known academics as Susan Okin, Rita Simon, Clare Dalton, Christopher Lasch, Kimberlé Crenshaw, William Julius Wilson, Martha Fineman, Frances Olsen, and Minow herself. Other writings come from short story anthologies, newspapers, and a battered women's shelter.

The selection of readings in *Family Matters* portray the family as a complex institution that is not easily defined. Nontraditional family settings and structures are emphasized as are the important differences in families across racial, ethnic, and class lines. Likewise, the mixture of readings illustrate the different ways to approach family law. A short story, while lacking the methodology and theory of a scholarly article often, (as the articles in this issue of *Focus* suggest) conveys a more powerful message. The academic contributions which form the bulk of the book are shorn of their references, making them less intimidating, and more accessible for classroom use.

The first section, "What Is a Family," sets the tone for the rest of the book, through two short stories, one about a gay man comparing how his grandmother had cared for his ailing grandfather, to his own current state of caring for a lover dying of AIDS, and the second about a dysfunctional abusive family in depression-era rural Canada. The word "family" clearly is appropriate to both stories, but these families are not the model 1950s nuclear family. The rest of the section continues this theme of families outside the traditional definitions. "Entering Families: Fact or Law?" examines teen-pregnancy, adoption, reproductive issues, foster care, the respective roles of mothers and fathers in raising children, and challenges to the institution of marriage. "Violence and Neglect" combines the issues of child abuse, violence against women, neglect by the state, and issues surrounding medical ethical issues. "Family Break-Up and Reorganization" includes articles on state intervention, child custody and the language used by lawyers during divorce proceedings. The short final section, "Alternatives to Court, Alternatives to Law, Alternatives to Family Law" provides a brief introduction to the possibilities and problems of divorce mediation, and other alternatives to formal law.

Family Matters is particularly sensitive to and inclusive of topics of concern to minorities and same sex couples. Race-matching in adoption, marriage during slavery, and black family structure are all covered. Several pieces focus on particular issues of domestic violence in minority communities. The legal and social issues of same sex relationships are examined through the debate over whether the legal institution of marriage should be replicated for same sex couples, legal representation of gay men and lesbians, and selections on negotiating same sex relationships in a heterosexual dominated world.

An eloquent and horrifying account of an abusive marriage in the section on domestic violence ends with sentence, "I would like to do more but that would take a book – and there is no market because there are no ears." What family means, who it includes, and how it can go wrong has become an issue that finally is being discussed. Outdated narrow definitions of family are coming to be replaced by an enormous variety of new understandings. Hopefully in the future this woman's lament will not be necessary. Those who fall outside of traditional family structures, and those oppressed or affected by the failures of family will have a voice, and people will listen. *Family Matters* presents a wide range of readings that will assist students in becoming more aware and familiar with those voices. AS

The Value of Fiction

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interpretations of the material in *The Mystery of Edwin Drood*, *The Life and Loves of a She Devil*, and *Cry, The Beloved Country* has been as much a learning experience for me as it has for the students. More importantly, the discussions give the students an opportunity to learn about each other and to hear values and views that have not been presented to them previously in a non-threatening setting.

Fiction also vividly illustrates the effects of decisions upon the lives of people and the environment. In the series of short stories in *The Big Aiieeeee!* and *North of the Rio Grand*, the reader learns about the thoughts and lives of Asians and Latinos in the United States. We see the results of racism and exclusion upon people who look and/or speak differently from Europeans. The stories are full of desperation and hopelessness. The descriptions of poverty, illiteracy, back-breaking work for long hours, and life on land that has been abused and worn out tear at the heart-strings of even the most cynical. But, through it all, the sense of love of family shines. More significantly, we learn how government policies and mean-spirited social policies are perceived by those who are impacted. Our role, as citizens, in instituting and implementing those policies are a logical part of class discussions. The relevancy and contemporary nature of the issues are obvious to students.

A word of caution must be given. Selection of appropriate material is essential. Publishers readily admit that they deal only with material that is "marketable." Marketability does not ensure accuracy, even allowing for literary license. It is still important to have the accurate information base of a text. This can take the form of a book or lectures, but it must be present. Fiction is a supplement – a useful and beneficial supplement that provides interest and relevancy, teaches values, and mediates conflict.

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For further information and/or to order the above publications, contact: Anthony Star, ABA Commission on College and University Legal Studies, 541 N. Fairbanks Ct., Chicago, IL 60611-3314; (312) 988-5736.

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tate Interests in National Policy Making (Harvard, 1993); and Christopher L. Tomlins, *Law, Labor and Ideology in the Early American Republic* (Cambridge, 1993).

The ABF sponsors a quarterly journal, *Law and Social Inquiry*, which is published by the University of Chicago Press. Articles, which are submitted by academics in the U.S. and overseas, provide original contributions to the empirical understanding of laws, legal processes, and legal institutions and are refereed by academic specialists. Individuals with academic affiliations can subscribe to *Law and Social Inquiry* for $21.75/year or $40/two years. Orders may be directed to The University of Chicago Press, Journals Division, P.O. Box 37005, Chicago, IL 60637.

The ABF Working Paper Series provides a means of disseminating findings of research programs before they are published. Among the new titles are "Unemployment and Crime," "The Act of Appealing," and "Strategies and Styles in Regulatory Disputes." A brochure published annually lists new titles, previous titles still available, and citations for papers published in journals and books. Working Papers are available for purchase from the ABF at the price of $2.00 per paper.

Finally, reports on projects are directed to the organized bar and to the interested public in the Foundation's Annual Report and in the ABF's quarterly newsletter, *Researching Law: An ABF Update*. Copies of the Annual Report and individual subscriptions to the newsletter are free of charge and may be obtained by writing or calling the American Bar Foundation, 750 N. Lake Shore Drive, Chicago, IL 60611; (312) 988-6500.

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